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**Marjam Supply Company, Inc. and Teamsters Local
863, International Brotherhood of Teamsters.**
Case 22–CA–27198

January 31, 2006

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN
AND SCHAUMBER

This is a refusal-to-bargain case in which the Respondent is contesting the Union’s certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed on December 2, 2005, the Acting General Counsel issued the complaint on December 13, 2005, alleging that the Respondent has violated Section 8(a)(1) and (5) of the Act by refusing the Union’s request to bargain following the Union’s certification in Case 22–RC–12641. (Official notice is taken of the “record” in the representation proceeding as defined in the Board’s Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On January 3, 2006, the Acting General Counsel filed a Motion for Summary Judgment. On January 5, 2006, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

The Respondent admits its refusal to bargain, but contests the validity of the Union’s certification on the basis of the Board’s unit determination in the representation proceeding. Specifically, the Respondent contends that the petitioned-for and certified unit limited to the Respondent’s drivers is inappropriate, and that the only appropriate unit consists of a facility-wide unit encompassing both drivers and mechanics.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this un-

fair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the General Counsel’s Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a New York corporation with an office and a place of business in Hillside, New Jersey, has been engaged in the pickup and delivery of building materials.

During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its business operations described above, purchased and received at its Hillside facility goods valued in excess of \$50,000 directly from points outside of the State of New Jersey.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that Teamsters Local 863, International Brotherhood of Teamsters (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held October 19, 2005, the Union was certified on November 3, 2005, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time drivers employed by the Employer at its Hillside, New Jersey facility, excluding all mechanics, office clerical employees, guards and supervisors as defined in the Act and all other employees.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

On about November 3, 2005, the Union, by letter, requested that the Respondent schedule dates for negotiations with it as the exclusive collective-bargaining representative of the certified unit.

By letter dated November 23, 2005, the Respondent refused to recognize and bargain with the Union. The Respondent’s November 23 letter to the Union stated:

In light of Marjam’s inability under the National Labor Relations Act to seek judicial review of the Regional Director’s and Board’s erroneous decision concerning the exclusion of mechanics from the bargaining unit, Marjam does not recognize the certification of repre-

sensation and, therefore, refuses to bargain with Teamsters Local 863.

We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(1) and (5) of the Act.

CONCLUSION OF LAW

By failing and refusing since November 23, 2005, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(1) and (5) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Marjam Supply Company, Inc., Hillside, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Teamsters Local 863, International Brotherhood of Teamsters as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time drivers employed by the Employer at its Hillside, New Jersey facility, excluding all mechanics, office clerical employees, guards and supervisors as defined in the Act and all other employees.

(b) Within 14 days after service by the Region, post at its facilities in Hillside, New Jersey, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since November 23, 2005.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. January 31, 2006

Robert J. Battista,	Chairman
Wilma B. Liebman,	Member
Peter C. Schaumber,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union
Choose representatives to bargain with
us on your behalf
Act together with other employees for your
benefit and protection
Choose not to engage in any of these protected
activities.

WE WILL NOT refuse to bargain with Teamsters Local 863, International Brotherhood of Teamsters as the exclusive bargaining representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time drivers employed by us at our Hillside, New Jersey facility, excluding all mechanics, office clerical employees, guards and supervisors as defined in the Act and all other employees.

MARJAM SUPPLY COMPANY, INC.